## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: PHILIPS RECALLED CPAP,

**BI-LEVEL PAP, AND MECHANICAL**:

VENTILATOR PRODUCTS

LITIGATION

Master Docket: Misc. No. 21-mc-1230-JFC

MDL No. 3014

SHORT FORM COMPLAINT FOR

: PERSONAL INJURIES, DAMAGES,

AND DEMAND FOR JURY TRIAL

**This Document Relates to:** 

L.E.S., a minor child, by and through her mother and next friend, SHAVONDRA SMALLEY Civil Docket 2:22-cv-00348-JFC

Plaintiff(s) incorporate(s) by reference the Amended Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial filed in *In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Litigation*, MDL No. 3014, Master Docket Misc. No. 21-mc-1230 (the "Master Long Form Complaint"). This Short Form Complaint adopts the allegations, claims, and requested relief as set forth in the Master Long Form Complaint. As necessary herein, Plaintiff(s) may include: (a) additional claims and allegations against Defendants; and/or (b) additional claims and allegations against other Defendants not listed in the

Plaintiff(s) further allege(s) as follows:

## I. **DEFENDANTS**

Master Long Form Complaint.

- 1. Plaintiff(s) name(s) the following Defendants in this action:
  - Koninklijke Philips N.V.
  - Philips North America LLC.
  - Philips RS North America LLC.

		Philips Holding USA Inc.
		Philips RS North America Holding Corporation.
		Polymer Technologies, Inc.
		Polymer Molded Products LLC.
II.	PLA	INTIFF(S)
	2.	Name of Plaintiff(s): L.E.S., a minor child, by and through her mother and next friend, SHAVONDRA SMALLEY
	3.	Name of spouse of Plaintiff (if loss of consortium claim is being made):  N/A
	4.	Name and capacity ( <i>i.e.</i> , executor, administrator, guardian, conservator, etc.) of other Plaintiff, if any: Shavondra Smalley - Guardian
	5.	State(s) of residence of Plaintiff(s) (if the Recalled Device user is deceased, residence at the time of death):  Mississippi
III.	DES	IGNATED FORUM
	6.	Identify the forum (United States District Court and Division) in which the Plaintiff would have filed in the absence of direct filing:
		The United States District Court for the Southern District of Mississippi - Western Division

## IV. USE OF A RECALLED DEVICE

7. Plaintiff used the following Recalled Device(s):

E30 (Emergency Use Authorization)	Dorma 500
☐ DreamStation ASV	REMstar SE Auto
DreamStation ST, AVAPS	✓ Trilogy 100
SystemOne ASV4	Trilogy 200
C-Series ASV	Garbin Plus, Aeris, LifeVent
C-Series S/T and AVAPS	A-Series BiPAP Hybrid A30 (not marketed
OmniLab Advanced +	in U.S.)
SystemOne (Q-Series)	A-Series BiPAP V30 Auto
DreamStation	A-Series BiPAP A40
DreamStation Go	A-Series BiPAP A30
Dorma 400	Other Philips Respironics Device; if other,
	identify the model:
V. INJURIES	
	physical injuries as a result of using a Recalled lant symptoms and consequences associated
COPD (new or worsening)	
Asthma (new or worsening	)
Pulmonary Fibrosis	
✓ Other Pulmonary Damage/	Inflammatory Response
Cancer	(specify cancer)
Kidney Damage	
Liver Damage	

VI.

	Heart Damage	
	Death	
	✓ Other (specify)	
		luid Build-Up in Lungs, Pneumonia, Shortness of Breath, Frachea Infections, Respiratory Failure
CAU	USES OF ACTION/D	AMAGES
9.	in the Master Long	Philips N.V., Plaintiff(s) adopt(s) the following claims asserted Form Complaint for Personal Injuries, Damages and Demand the allegations and prayer for relief with regard thereto, as set
	Count I:	Negligence
	Count II:	Strict Liability: Design Defect
	Count III:	Negligent Design
	Count IV:	Strict Liability: Failure to Warn
	Count V:	Negligent Failure to Warn
	Count VI:	Negligent Recall
	Count VII:	Battery
	Count VIII:	Strict Liability: Manufacturing Defect
	Count IX:	Negligent Manufacturing
	<b>✓</b> Count X:	Breach of Express Warranty
	<b>✓</b> Count XI:	Breach of the Implied Warranty of Merchantability
	Count XII:	Breach of the Implied Warranty of Usability
	✓ Count XIII:	Fraud
	Count XIV:	Negligent Misrepresentation

Count XV:	Negligence Per Se
Count XVI:	Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
Count XVII:	Unjust Enrichment
Count XVIII:	Loss of Consortium
Count XIX:	Survivorship and Wrongful Death
✓ Count XX:	Medical Monitoring
Count XXI:	Punitive Damages
Count XXII:	Other [specify below]
Personal Injury	
asserted in the Mast	th America LLC, Plaintiff(s) adopt(s) the following claims ter Long Form Complaint for Personal Injuries, Damages and tal. and the allegations and prayer for relief with regard thereto.
asserted in the Mast	````` <u> </u>
asserted in the Mast Demand for Jury Tri as set forth therein:	ter Long Form Complaint for Personal Injuries, Damages and al, and the allegations and prayer for relief with regard thereto,
asserted in the Mast Demand for Jury Tri as set forth therein:  Count I:	ter Long Form Complaint for Personal Injuries, Damages and fal, and the allegations and prayer for relief with regard thereto,  Negligence
asserted in the Mast Demand for Jury Tri as set forth therein:  Count I:  Count II:	ter Long Form Complaint for Personal Injuries, Damages and fal, and the allegations and prayer for relief with regard thereto,  Negligence  Strict Liability: Design Defect
asserted in the Mast Demand for Jury Tri as set forth therein:  Count I:  Count II:  Count III:	ter Long Form Complaint for Personal Injuries, Damages and al, and the allegations and prayer for relief with regard thereto,  Negligence  Strict Liability: Design Defect  Negligent Design
asserted in the Mast Demand for Jury Tri as set forth therein:  Count I:  Count II:  Count III:  Count IV:	ter Long Form Complaint for Personal Injuries, Damages and fal, and the allegations and prayer for relief with regard thereto,  Negligence  Strict Liability: Design Defect  Negligent Design  Strict Liability: Failure to Warn
asserted in the Mast Demand for Jury Tri as set forth therein:  Count II:  Count III:  Count IV:  Count IV:	ter Long Form Complaint for Personal Injuries, Damages and fal, and the allegations and prayer for relief with regard thereto,  Negligence  Strict Liability: Design Defect  Negligent Design  Strict Liability: Failure to Warn  Negligent Failure to Warn
asserted in the Mast Demand for Jury Tri as set forth therein:  Count I:  Count II:  Count IV:  Count IV:  Count V:	ter Long Form Complaint for Personal Injuries, Damages and fal, and the allegations and prayer for relief with regard thereto,  Negligence  Strict Liability: Design Defect  Negligent Design  Strict Liability: Failure to Warn  Negligent Failure to Warn  Negligent Recall

✓ Count X:	Breach of Express Warranty
<b>✓</b> Count XI:	Breach of the Implied Warranty of Merchantability
✓ Count XII:	Breach of the Implied Warranty of Usability
✓ Count XIII:	Fraud
✓ Count XIV:	Negligent Misrepresentation
Count XV:	Negligence Per Se
Count XVI:	Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
✓ Count XVII:	Unjust Enrichment
Count XVIII:	Loss of Consortium
Count XIX:	Survivorship and Wrongful Death
Count XX:	Medical Monitoring
Count XXI:	Punitive Damages
Count XXII:	Other [specify below]
Personal Injury	
asserted in the Mast	orth America LLC, Plaintiff(s) adopt(s) the following claims er Long Form Complaint for Personal Injuries, Damages and al, and the allegations and prayer for relief with regard thereto,
Count I:	Negligence
Count II:	Strict Liability: Design Defect
Count III:	Negligent Design
Count IV:	Strict Liability: Failure to Warn

11.

Count V:	Negligent Failure to Warn
Count VI:	Negligent Recall
Count VII:	Battery
Count VIII:	Strict Liability: Manufacturing Defect
Count IX:	Negligent Manufacturing
Count X:	Breach of Express Warranty
Count XI:	Breach of the Implied Warranty of Merchantability
Count XII:	Breach of the Implied Warranty of Usability
Count XIII:	Fraud
Count XIV:	Negligent Misrepresentation
Count XV:	Negligence Per Se
Count XVI:	Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
Count XVII:	Unjust Enrichment
Count XVIII:	Loss of Consortium
Count XIX:	Survivorship and Wrongful Death
Count XX:	Medical Monitoring
Count XXI:	Punitive Damages
Count XXII:	Other [specify below]
Personal Injury	

12.	in the Master Long	ng USA Inc., Plaintiff(s) adopt(s) the following claims asserted Form Complaint for Personal Injuries, Damages and Demand he allegations and prayer for relief with regard thereto, as set
	Count I:	Negligence
	Count II:	Strict Liability: Design Defect
	Count III:	Negligent Design
	Count IV:	Strict Liability: Failure to Warn
	Count V:	Negligent Failure to Warn
	Count VI:	Negligent Recall
	Count VII:	Battery
	Count VIII:	Strict Liability: Manufacturing Defect
	Count IX:	Negligent Manufacturing
	Count X:	Breach of Express Warranty
	Count XI:	Breach of the Implied Warranty of Merchantability
	Count XII:	Breach of the Implied Warranty of Usability
	Count XIII:	Fraud
	Count XIV:	Negligent Misrepresentation
	Count XV:	Negligence Per Se
	Count XVI:	Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
	Count XVII:	Unjust Enrichment
	Count XVIII:	Loss of Consortium
	Count XIX:	Survivorship and Wrongful Death
	Count XX:	Medical Monitoring

	Count XXI:	Punitive Damages
	Count XXII:	Other [specify below]
	Personal Injury	
13.	following claims ass	North America Holding Corporation, Plaintiff(s) adopt(s) the serted in the Master Long Form Complaint for Personal Injuries, and for Jury Trial, and the allegations and prayer for relief with t forth therein:
	Count I:	Negligence
	Count II:	Strict Liability: Design Defect
	Count III:	Negligent Design
	Count IV:	Strict Liability: Failure to Warn
	Count V:	Negligent Failure to Warn
	Count VI:	Negligent Recall
	Count VII:	Battery
	Count VIII:	Strict Liability: Manufacturing Defect
	Count IX:	Negligent Manufacturing
	Count X:	Breach of Express Warranty
	Count XI:	Breach of the Implied Warranty of Merchantability
	Count XII:	Breach of the Implied Warranty of Usability
	Count XIII:	Fraud
	Count XIV:	Negligent Misrepresentation
	Count XV:	Negligence Per Se

	Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
Count XVII:	Unjust Enrichment
Count XVIII:	Loss of Consortium
Count XIX:	Survivorship and Wrongful Death
Count XX:	Medical Monitoring
Count XXI:	Punitive Damages
Count XXII:	Other [specify below]
Personal Injury	
asserted in the Mast	chnologies, Inc., Plaintiff(s) adopt(s) the following claims ter Long Form Complaint for Personal Injuries, Damages and
	ter Long Form Complaint for Personal Injuries, Damages and al, and the allegations and prayer for relief with regard thereto,
as sat fauth thansing	iai, and the anegations and prayer for tener with regard thereto,
Count I:	Negligence
Count I:	
Count I:	Negligence
Count I:	Negligence Strict Liability: Design Defect
Count I: Count II: Count III:	Negligence Strict Liability: Design Defect Negligent Design
Count I: Count II: Count III: Count IV:	Negligence Strict Liability: Design Defect Negligent Design Strict Liability: Failure to Warn
Count I: Count II: Count III: Count IV: Count IV:	Negligence Strict Liability: Design Defect Negligent Design Strict Liability: Failure to Warn Negligent Failure to Warn
Count I: Count II: Count III: Count IV: Count IV: Count V: Count VIII:	Negligence Strict Liability: Design Defect Negligent Design Strict Liability: Failure to Warn Negligent Failure to Warn Strict Liability: Manufacturing Defect
Count II: Count III: Count IV: Count IV: Count V: Count V: Count VIII: Count IX:	Negligence Strict Liability: Design Defect Negligent Design Strict Liability: Failure to Warn Negligent Failure to Warn Strict Liability: Manufacturing Defect Negligent Manufacturing

Count XVIII:	Loss of Consortium
Count XIX:	Survivorship and Wrongful Death
Count XX:	Medical Monitoring
Count XXI:	Punitive Damages
Count XXII:	Other [specify below]
asserted in the Mast	ded Products LLC, Plaintiff(s) adopt(s) the following claims ter Long Form Complaint for Personal Injuries, Damages and al, and the allegations and prayer for relief with regard thereto,
Count I:	Negligence
Count II:	Strict Liability: Design Defect
Count III:	Negligent Design
Count IV:	Strict Liability: Failure to Warn
Count V:	Negligent Failure to Warn
Count VIII:	Strict Liability: Manufacturing Defect
Count IX:	Negligent Manufacturing
Count XIII:	Fraud
Count XIV:	Negligent Misrepresentation
Count XVII:	Unjust Enrichment
Count XVIII:	Loss of Consortium
Count XIX:	Survivorship and Wrongful Death
Count XX:	Medical Monitoring

Count XXI:	Punitive Damages
Count XXII:	Other [specify below]
Complaint for Personabove, the additional Plaintiff(s) assert(s)	against the Defendants identified in the Master Long Formula Injuries, Damages and Demand for Jury Trial are alleged al facts, if any, supporting these allegations must be pleaded the following additional factual allegations against the
	ed in the Master Long Form Complaint for Personal Injuries
Plaintiff(s)' damages	(s) that additional parties may be liable or responsible for salleged herein. Such additional parties, who will be hereafterndants, are as follows (must name each Defendant and it
referred to as Defer citizenship):	name, are as rone we (must have easil 2 stendam and h
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18.	Plaintiff(s) assert(s) the following additional claims and factual allegations agains
	other Defendants named in Paragraph 16 above:

WHEREFORE, Plaintiff(s) pray(s) for relief and judgment against Defendants and all such further relief that this Court deems equitable and just as set forth in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial and any additional relief to which Plaintiff(s) may be entitled.

Date: Dec 22 2022

RÓNALD V. JOHNSON, IV (MS. BAR NO. 105950)

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